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No. 01-1038

In The

Supreme Court of the United States

October Term, 2001

ADMINISTRATION PROCEEDING ESTATE OF DEBRA LYNCH a/k/a Debra L. Lynch & Debra Franchi, Deceased,

DEAN LYNCH,

Petitioner,

– against –

PATRICIA FLAHERTY, LINDA A. KACEWICZ, AND MICHAEL P. FRANCHI,

Respondents.

On Petition for a Writ of Certiorari to The New York Court of Appeals.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SHEILA GINSBERG RIESEL
BLANK ROME TENZER GREENBLATT LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 885-5000

-and-

BIRBROWER, MONTALBANO, CONDON & FRANK, P.C.
67 North Main Street
P.O. Box 1070
New City, New York 10956
(845) 634-7010

Attorneys for Respondents

Of Counsel:
Sheila Ginsberg Riesel
Leonard G. Florescue
Donald Frank
William Frank
Stephen McSweeney

SW
St. Louis West, Inc. (9942)
NY (212) 684-3117 NJ (201) 863-8133
Printed on Recycled Paper

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QUESTIONS PRESENTED

I. Is a constitutional issue which is not raised in the trial court preserved for review in the United States Supreme Court?

II. Is a final judgment of a state court entitled to Full Faith and Credit in the courts of another state?

III. Where a potential beneficiary receives notice of a state court proceeding and contacts that state court but then intentionally fails to appear in that proceeding, does the Full Faith and Credit clause preclude collateral attack of that court's decree in another state?

IV. Where collateral attack on a judgment is not available in the state rendering the judgment, can the judgment be collaterally attacked in another state?

V. Even if the federal constitutional mandate to provide Full Faith and Credit does not require the courts of one state to enforce the judgment of another state, may a state provide a greater degree of Full Faith and Credit than is mandated by the constitution? Alternatively, may the second state enforce the judgment as a matter of comity or under its own local law?

VI. Does due process preclude determining an issue solely on papers submitted to a court? Does due process require a court to hold a hearing or to issue a written opinion responding to every argument made by a party?

VII. Is a claim to be the administrator of an estate a property right protected by due process?

VIII. If the Petitioner could not possibly prevail, as a matter of law, upon a remand of the case, should this Court grant certiorari?

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PRELIMINARY STATEMENT

Respondents, the executors of the estate of Deborah Lynch, respectfully submit this brief in opposition to the application for a writ of certiorari by Petitioner, Dean Lynch, an attorney, appearing *pro se*. The Petition is without merit and, in fact, it is based on significant misstatements of both law and fact.

This application for certiorari is founded upon four primary misapprehensions of the law by Petitioner. First, a party cannot create a due process claim by his own deliberate refusal to appear before a court. Second, no one has a "property right" to be the administrator of an estate and, hence, even if the remainder of Petitioner's claims made any legal sense, there would be no constitutional issue presented because he was not deprived of any property right by the decisions below. Third, domicile is a question of fact, and a state has jurisdiction to oversee the probate of an estate if the decedent was domiciled there at the time of her death, irrespective of the decedent's marital status, and irrespective of whether or not the state has personal jurisdiction over potentially interested parties. Fourth, a "limited appearance" relates to personal jurisdiction over a party. A potential objectant to a Will is not a party to a probate proceeding, and one who wishes to make a limited appearance must present actual evidence of the jurisdictional defect to the court – something which Petitioner failed to do.

PROCEDURAL HISTORY

There are two directly relevant legal proceedings here and a third of significance for the Court to completely understand Petitioner's claims and motivations.

The Massachusetts Probate Proceeding

The first direct proceeding was the admission to probate in Massachusetts of a Will executed there on June 28, 1995 by Deborah Lynch, the decedent. [1] At the time of her death, Ms. Lynch had been a domiciliary of Massachusetts for approximately two years.

There is no question but that Petitioner received notice of the Massachusetts proceeding as he admits the same throughout his Petition. Petitioner claims to have made a special appearance in Massachusetts but that is a procedural *non sequitur*. Personal jurisdiction over Petitioner was, and is, irrelevant to whether or not the Will could be probated in Massachusetts. The only issues on a probate proceeding are the domicile of the decedent, and the presence or absence of the customary defenses of "lack of capacity" *etc.* [2]

Instead, of raising these arguments in court, Petitioner simply wrote to the Massachusetts court claiming (falsely) that Respondent's Massachusetts counsel (when presenting the Will for probate) had misrepresented the decedent's marital status. One presumes that Petitioner's argument is that decedent (if still married to Petitioner at the date of her death) could not have a different domicile than his. [3]

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1 Decedent executed three Wills – December 1, 1993 (in Rhode Island), January 3, 1994 (in New Jersey) and June 28, 1995 (in Massachusetts). It is the third Will which was admitted to probate in Massachusetts.

2 It is irrelevant for that purpose whether Massachusetts had personal jurisdiction in the *International Shoe* sense over Petitioner or over decedent's minor daughter.

3 In fact, New York (which Petitioner claims is the relevant State) allows a wife to have a different domicile than her husband's.

However, the decedent's marital status is irrelevant both to domicile and to the jurisdiction of the probate court. The only relevant issue is where decedent was domiciled when she died.

Petitioner does not deny that he received notice of the Massachusetts court's intention to hold a hearing on the appropriate objections to probate of the decedent's Will in that state. Nor does he deny that he deliberately failed to appear before that court to make his objections, such as they were.[4] The Massachusetts probate court, accordingly, admitted the 1995 Will to probate, finding that Petitioner had not made the appropriate objections.

Significantly, Petitioner failed to appeal that decision and, under Massachusetts law, he cannot collaterally attack it. See Point IV.

The New York Surrogate's Proceeding

Rather than appeal in Massachusetts, Petitioner, instead, requested that the New York Surrogate's Court (New York's probate court) find that decedent's Wills were invalid, and grant him letters of administration over decedent's estate. This action is a collateral attack on the Massachusetts determination. This is the second directly relevant judicial proceeding in this Court.

Landsford v. Landsford, 96 A.D. 2d 832, 456 N.Y.S. 2d 583 (2nd Dept. 1983). See also New York Domestic Relations Law § 231 (McKinney's 1999).

[4] Petitioner engages in numerous attacks on the integrity and competence of the courts in both New York and Massachusetts, *e.g.* referring to the New York Court of Appeals' actions in this case as "a mockery of the rule of law".(See, *e.g.* pages 22-23 of the Petition.)

The New York Court initially dismissed Petitioner's application because he had failed to include copies of the prior Wills. He amended his pleading but referred to, and annexed, only two of the three Wills that decedent had executed. The missing one was the 1994 Will which was prepared by Petitioner's friends and executed in Petitioner's presence. [5] The New York Court learned of the second Will only from Respondents.

Ultimately, the New York Surrogate dismissed Petitioner's claims because of the prior Massachusetts decision and New York's Appellate Division affirmed on the basis of Full Faith and Credit.

Petitioner then sought reargument from the Appellate Division or, alternatively, leave to appeal to the New York's highest court, the Court of Appeals. Both motions were denied. The Court of Appeals denied Petitioner's motion for leave to appeal. This Petition for certiorari ensued.

The New York Divorce Action

The third proceeding is the divorce action between Petitioner and decedent. That action is still pending in the same Appellate Division in New York. On January 11, 1996, approximately six months after the 1995 Will probated in Massachusetts was executed in that State, a stipulation was

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[5] Petitioner originally denied knowing of this Will and then recanted when confronted with an audio tape showing his presence during its preparation and at its execution. See Appendix 1.

It is this failure to apprise the Court of the 1994 Will's existence which is the basis of the disciplinary proceeding against Petitioner in New Jersey. (See Petition, page 21)

entered into on the record in the New York Supreme Court (the trial court with jurisdiction over divorce matters) in Petitioner's presence and with his cooperation. (See Appendix 2 for the transcript of this proceeding). In court, that day, decedent testified to the grounds for divorce, without objection from Petitioner, the decedent's divorce counsel moved for the court to grant the divorce and the motion was granted. [6] Certain provisions of the stipulation (relating only to the parties' child) were contingent upon approval by a guardian ad litem. Ultimately, the first and second guardians both approved those provisions as modified. [7] These last events occurred four years after decedent's death. Nonetheless, despite the fact that the court had held the marital action open for those four years, it ruled that the matrimonial action had abated when decedent died.

That determination is currently on appeal to the Appellate Division in New York and was argued on January 29, 2002. Petitioner's claim that Massachusetts had no jurisdiction is founded primarily on his false and irrelevant claim that Respondents' counsel misrepresented decedent's marital status to the Massachusetts court. If the New York Appellate Division finds that Respondent and decedent were divorced, even that spurious claim would fail.

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6 If Petitioner truly believes that decedent was incompetent to make the 1995 Will (a claim he has made in every court, including this one), then he committed a fraud on the New York divorce court when he entered into that stipulation.

7 Petitioner refers this Court to the first law guardian's preliminary report (Petition, p. 20) but fails to mention the later reports by both law guardians which reach a contrary conclusion and are critical of Petitioner's motives. See Appendix 3.

COUNTER-STATEMENT OF FACTS

The facts of this case are significantly different from those asserted by Petitioner. For the Court's convenience, a chronology of key events is attached as Appendix 4.

THE MASSACHUSETTS PROCEEDING

The decedent was a domiciliary of the State of Massachusetts at the time of her death on September 5, 1996. Decedent's 1995 Will was filed with the Middlesex County Probate and Family Court on July 22, 1997. The nominated executors under the Will, Respondents herein, commenced probate proceedings in that Court and duly served all interested persons--including Petitioner--by November 4, 1998.

On November 6, 1998, Petitioner filed a petition for Letters of Administration in Rockland County, New York, alleging the invalidity of only two of decedent's prior Wills and concealing the existence of the Will executed at his behest. (See footnote 5.)

Petitioner wrote to the Massachusetts Court on November 16, 1998 acknowledging that he knew of the commencement of the Massachusetts proceedings and requesting that the Court either recognize that it lacked jurisdiction over him, or, in the alternative, set the matter down for a full hearing. On January 21, 1998, Petitioner filed a Notice of Special Appearance and Affidavit of Objections to Petition in the Massachusetts Court.

On June 3, 1999, both the Court and Respondents' counsel gave notice to Petitioner that the Court would hold a pretrial conference on June 15, 1999. The Court specifically

stated that the case might be ordered to immediate trial on that date if it appeared that one party, through a failure to appear at the conference or otherwise, would not present a case. [The Court should note that Petitioner requested a hearing in his November 16, 1998 letter. See Appendix 5].

On June 10, 1999, Petitioner wrote a second letter to the Massachusetts Court acknowledging receipt of the Court's Notice and Order, and objecting that the Court did not have jurisdiction over him. Petitioner stated in his letter that he had made a "special appearance" to contest jurisdiction, and would not attend the conference.

On June 14, 1999, Petitioner sent a third letter [8] by facsimile to the Massachusetts Court stating that he would not appear on June 15th, and requesting that the Court take no action until his Petition for Letters of Administration in New York was resolved.

Petitioner failed to appear on June 15, 1999 and Justice Boorstein admitted decedent's 1995 Will to probate, based on the submissions of Respondents and the fact that no proper or evidentiary objections were interposed. [9] Judge Boorstein expressly and properly rejected Petitioner's personal jurisdiction argument by noting that it was irrelevant to whether Massachusetts could probate the 1995 Will.

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8 As a lawyer, Petitioner had to know that such letters are not evidentiary, and that even if he were correct that decedent was not domiciled in Massachusetts, the court could not consider or act on them.

9 A review of Petitioner's Appendix F shows that Respondents' Massachusetts counsel, on that occasion, fairly advised the court of Petitioner's legal positions.

Justice Boorstein further noted that Petitioner had failed to raise the conventional objections as to domicile, undue influence, lack of capacity or improper execution, and specifically found that he would not present a case. (Appendix 6) Petitioner never appealed the Massachusetts Decree and, as noted, it is not subject to collateral attack.

Petitioner received notice of the Massachusetts conference date and deliberately failed to appear because he was concerned that a decision on the merits in Massachusetts would have precluded him from proceeding in New York and because he claimed he could not have received a full and fair hearing in Massachusetts. (Petition, p. 19)

THE NEW YORK SURROGATE'S AND APPELLATE DETERMINATIONS

On September 8, 1999, the New York Surrogates Court dismissed Petitioner's application and that decision was affirmed by the New York Appellate Division on Full Faith and Credit grounds. That determination is the subject of this Petition.

PETITIONER'S POSITION IS A TANGLE OF FACTUAL DEFICIENCIES AND CONTRADICTIONS

Petitioner stated that he failed to disclose the January 1994 Will because he "knew" it had been revoked by the subsequent June 1995 Will. This statement, of course, makes no sense, since it is in direct contradiction of Petitioner's sworn contention that the June 1995 Will is invalid. If the June 1995 Will were invalid, then the January 1994 Will would not have been revoked and would, itself, be valid.

Petitioner told the New York court that the June 1995 and December 1993 Wills were invalid because the decedent lacked testamentary capacity. [10] Nevertheless, in January 1996, about six months after the June 1995 Will was executed, Petitioner appeared before the same New York Judge to whom he later alleged the decedent's incapacity, entered into a contract with decedent in open court, and allowed her to testify without objection in the divorce proceeding. (See Appendix 2)

Petitioner has never offered any credible evidence to establish his incapacity claim. He does not allege specific facts demonstrating an impaired state of mind at the time of the execution of the 1993 and 1995 Wills. His "proof" of this claim is a single entry on an unauthenticated death certificate that was never admitted into evidence by any court. Even if Petitioner had presented this document to a Court it would in no way constitute competent evidence of Petitioner's claims.

Petitioner never presented anything at all "supporting" his claims of undue influence and duress.

Petitioner's Conflict of Interests

There is a fundamental problem with granting fiduciary status to Petitioner--the relief he sought from the New York Court. Petitioner has stated his intention to exercise an alleged spousal right of election against decedent's estate, should it be determined that he was the spouse of the decedent when she died, and to attack the probated Will. (See *e.g.* Petition, page 21) While Petitioner

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[10] Of course, the 1994 Will, executed in Petitioner's presence, was signed after decedent was supposedly incompetent. The internal contradictions in Petitioner's story are many and evident.

claims to be waging this litigation for the sake of his daughter (Petition, pages 20-22 and 27) the fact is that the Will leaves virtually everything to that daughter. Where is the advantage for her in Petitioner's proposed attack on the probated Will?

Thus, Petitioner's interests are in direct opposition to those of his daughter. Under New York law, that alone disqualifies Petitioner from being appointed the administrator even if New York had not properly dismissed the application in light of the Massachusetts decree.

Both guardians ad litem in New York recognized that fact. Petitioner misstates the guardians' position to this Court. (Petition. p. 20) In fact, neither guardian agreed with Petitioner and both questioned his motives. (Appendix 3)

Petitioner also fails to explain why his claims could not have been protected in Massachusetts if he produced evidence that decedent was not a Massachusetts domiciliary or that she was incompentent when she executed the 1995 Will, or by asserting his elective share and the daughter's rights in that State. In Appendix J of his Petition (a 1994 newspaper article), Petitioner claims that a 1992 New York law permits him to attack certain trusts if he is the widower. (Petition p. 21) Petitioner only reveals his lack of understanding of the law. Prior to 1992 a decedent in New York could "defeat" his spouse's elective share by providing in his Will a trust with a corpus equal to 1/3 of the estate. It is that rule which was abrogated. After that change, a trust *created by the decedent* will not defeat the right of election. Where Petitioner loses his way is in his confusion of the difference between a trust created by the decedent and those created by third-parties – which is the case with the trusts here. Third-party created trusts, under New York law, are simply not part of the decedent's estate and therefore are not

subject to the surviving spouse's elective share, and, thus, New York law would not avail Petitioner.

POINT I
PETITIONER'S CONSTITUTIONAL CLAIMS WERE NOT PRESERVED FOR REVIEW

At page 10 of the Petition, Petitioner states that his claim of a denial of due process "was raised to the Appellate Division". By his own admission, Petitioner's due process claims were not presented to the New York Surrogate's Court. Neither of the two New York appellate courts made any reference to Petitioner's due process claims. Under those circumstances this Court assumes that the constitutional issue was not properly presented. *Adams v. Robertson*, 520 U.S. 83, 86, 117 S. Ct. 1028, 1029 (1997).

New York appellate courts will not entertain issues not raised at trial. *Neiman v. City of New* York, 133 A.D. 2d 743, 520 N.Y.S. 2d 31 (2nd Dept. 1987); Martin *Mechanical Corporation v. P. J. Carlin Construction Co.*, 132 A.D. 2d 688, 518 N.Y.S. 2d 166 (2nd Dept. 1987). Accordingly, Petitioner's constitutional claims were not preserved for review in this Court and the Petition must be denied.

POINT II

THE POSSIBILITY OF BEING AN ESTATE FIDUCIARY IS NOT A PROPERTY INTEREST PROTECTED BY DUE PROCESS

When reduced to its essence, Petitioner's complaint is that he is not the person who has the fiduciary responsibility for administering decedent's estate. It is that fiduciary status that Petitioner seeks to parlay into financial gain for himself by attacking the Will and the trusts created for decedent's benefit by her family. (Petition, p. 21) However, there is no necessity that Petitioner be decedent's administrator before raising any or all of his claims as to the validity of the Wills, or the propriety of administration of the estate, or the marshalling of the estate's assets, or his or decedent's daughter's claims against the estate under the Will, in intestacy, or as surviving spouse or guardian of the child.

Even if the estate were administered in New York, it is only the underlying claims that might constitute property rights, and Petitioner would still have had to prove his entitlement thereto.

It is only the possibility of being decedent's administrator that Petitioner has conceivably lost. That contingency cannot possibly rise to the level of "property" or of a property right protected by the Due Process clause. Property is defined by looking to underlying state law. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972); *Grossman v. Axelrod*, 646 F. 2d 768, 770-71 (2nd Cir. 1981). In New York far more concrete claims such as "prospective [Medicaid] reimbursement payments" and an "interest in [maintaining] a particular rate of reimbursement" have been held not to be "property". *Hurlbut v. Whalen*, 58

A.D. 2d 311, 317, 396 N.Y.S. 2d 518 (4th Dept. 1977); *Greenwald v. Whalen*, 609 F. 2d 665, 668 (2nd Cir. 1979).

POINT III

PETITIONER CANNOT USE HIS OWN FAILURE TO PROPERLY RAISE HIS ARGUMENTS IN MASSACHUSETTS TO CREATE A DUE PROCESS CLAIM

Petitioner's objection to Massachusetts's exercise of jurisdiction is twofold: (1) there was a "fraud" [11] on the Massachusetts court and (2) there was no personal jurisdiction over him. Petitioner admits that he did not raise either claim at the Massachusetts hearing. Rather he wrote letters and filed documents making his claims, but deliberately failed to appear at the hearing (of which he had ample notice), and offered no evidentiary proof whatsoever of any of his claims.

It has consistently been held, in these circumstances, that any claimed due process issue has been waived. In *Loyd v. Loyd*, 731 F. 2d 393 (7th Cir. 1984), also involving a collateral attack on a determination made in another state's probate court, the widow was given notice of the proceeding

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[11] The Court will have noted that the document to which Petitioner refers at page 6 of the Petition (his Appendix F) quite simply has nothing whatsoever to do with Petitioner's claims of fraud.

At this juncture we must respectfully assert a point of personal privilege. Petitioner falsely accuses Respondents' counsel, Richard W. Renehan, of having "admitted" to lying to the Massachusetts Court (Petition. p. 6) Attorney Renehan's affidavit (attached hereto as Appendix 7) states that he (1) made no misrepresentations to the Massachusetts Court, and (2) has never told that court that his statements to it were untrue.

and she chose not to place her proof before the court. Under those circumstances, functionally identical to those here, the Seventh Circuit held that there was no denial of due process. The Court noted that due process requires only notice reasonably calculated to apprise the interested parties of the pendency of the action and that those parties have an opportunity to present their objections. *Loyd*, ibid. at 400; *Mullane v. Central Hanover Bank*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950). See *Sherrer v. Sherrer*, 334 U.S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429 (1948), ["If respondent failed to take advantage of the opportunities afforded him, the responsibility is his own [it will not] provide a basis for subsequent attack in the courts of a sister State ..."]; *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association*, 455 U.S. 691, 709-10, 102 S. Ct. 1357, 1369, 71 L. Ed. 2d 558 (1982); *Wozniak v. Conry*, 236 F. 3d 888, 890 (7th Cir. 2001) *certiorari denied* 121 S.Ct. 2243, 150 L.Ed.2d 231 (U.S. June 11, 2001) ["one who has spurned an invitation to explain himself can't complain that he has been deprived of an *opportunity* to be heard." (emphasis in original)] and *Tennessee v. Sizemore*, 200 F. 3d 373, 381 (5th Cir. 2000).

POINT IV

PETITIONER'S FAILURE TO PURSUE AN APPEAL IN MASSACHUSETTS PRECLUDES HIS COLLATERAL ATTACK IN NEW YORK

Petitioner chose not to appeal the Massachusetts decision in that state. Thus, that determination was no longer subject to collateral attack in Massachusetts (*Bloom v. Bloom*, 337 Mass. 480, 482, 150 N.E. 2d 24, 26 (1958)). Therefore, Petitioner has no right to attack the determination collaterally either in New York or in this Court. *Coe v. Coe*, 334 U.S.

378, 384, 68 S. Ct. 1094, 1096, 92 L. Ed. 1451 (1948); *Sherrer v. Sherrer*, above.

Even if the New York courts had applied New York law, as Petitioner wishes, they would have reached the same conclusion. In Massachusetts mere publication of notice of a probate proceeding is considered valid notice to the world. This is so even where fraud is alleged. *Farquhar v. New England Trust Co.*, 261 Mass. 209, 212, 158 N.E. 836, 838 (1927). That rule dovetails completely with the decision of New York's highest court in *Matter of Horton*, 217 N.Y. 363, 367, 111 N.E. 1066 (1916). See also see *Will of Brown*, 120 Misc. 2d 799, 802, 466 N.Y.S. 2d 988, 991 (Surr. Ct. Westchester Co. 1983). As Petitioner had actual notice of the Massachusetts proceeding and indeed communicated with the court about it, *a priori*, he has no standing to bring a collateral attack on the Massachusetts decree in New York.

POINT V

DUE PROCESS DOES NOT REQUIRE THAT A COURT HOLD A HEARING OR ISSUE A WRITTEN OPINION

Petitioner's claims were dismissed by the New York courts on papers and without holding a formal adversarial hearing on his claims that due process obligated the courts to hold a hearing on his claims as to the "fraud" on the court in Massachusetts and to write a formal opinion rejecting his arguments. [12] However, a court has no due process obligation to hold a hearing. The only requirement is notice and an

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12 Ironically, at page 8 of his Petition he claims that Justice Weiner had extensive "personal knowledge of the facts and circumstances".

opportunity to be heard. As Petitioner was the claimant in New York, obviously, he had notice. In this Court he fails to recognize the distinction between an opportunity "to be heard" and a hearing. All that due process requires is the opportunity to raise one's arguments to the court, which petitioner had. *Greene v. WCI Holdings Corporation*, 136 F. 3d 313, 315-16 (2nd Cir. 1998) *certiorari denied* 525 U.S. 983, 119 S. Ct. 448, 142 L. Ed.2d 402 (1998) held that the dismissal of a proceeding (as occurred here) without an oral hearing did not violate due process. "The opportunity to be heard orally on questions of law is not an inherent element of procedural due process, even when substantial questions of law are involved." See also *Wozniak v. Conry*, 236 F. 3d 888, 890 (7th Cir. 2001) holding that "due process does not require that a formal, adversarial hearing precede every decision affecting property."

POINT VI

NEW YORK CORRECTLY GRANTED FULL FAITH AND CREDIT TO THE MASSACHUSETTS DETERMINATION; EVEN IF IT WERE INCORRECT IN DOING SO, THE SAME DETERMINATION WOULD BE REACHED UPON COMITY OR INDEPENDENT STATE LAW GROUNDS ALONE

It is settled law, which Petitioner does not dispute, that a court's jurisdiction to administer an estate is solely dependent upon the decedent's domicile on the date of death. Section 3-5.1 (b) (2) of the Estates, Powers and Trusts Law (EPTL) of the State of New York provides that the law of the decedent's domicile at his death controls both the testamentary and intestate disposition of the decedent's estate. *Neto v. Thorner*, 718 F. Supp. 1222, 1224 (S.D.N.Y. 1989). It is the rendering State, not the forum state, whose law is used to determine if Full Faith and Credit should be accorded

a judgment. *Tennessee v. Sizemore*, 200 F. 3d 373, 378 (5th Cir. 2000). In *Matter of Horton*, 217 N.Y. 363, 367, 111 N.E. 1066 (1916) the court held that a probate proceeding in another state was "conclusive" if it could not be collaterally attacked in that other state. (217 N.Y. at 367). See also *Will of Brown* and Point IV, above.

Petitioner also fails to appreciate the fact that there are two purely non-constitutional bases upon which the New York courts could have chosen to follow and give precedence to the Massachusetts decision. Petitioner makes two separate legal errors. First, Petitioner assumes that a court cannot grant Full Faith and Credit to any determination which is not strictly entitled to it. However, Full Faith and Credit is only a minimum requirement of our republican form of government. No constitutional bar precludes a state court from applying Full Faith and Credit *more broadly* than it is required to do by the Constitution. In *Underwriters National Assurance Company* above this Court said that a court "may" inquire into jurisdiction before giving Full Faith and Credit to a judgment. (455 U.S. at 705, 102 S. Ct. at 1357). This Court did not say that the court "must" do so.

Thus, even if Petitioner were correct in his assertion that the Massachusetts determination was not strictly entitled to Full Faith and Credit, there was no constitutional error when the New York courts chose to afford full faith recognition to that determination. [13]

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13 Petitioner's partial quotation from New York CPLR 5401 (p. 3) is misleading and the statute does not comport with his claims. In fact, that section is merely a *definition* of a "foreign judgment" and says nothing about whether a judgment not precisely fitting that definition can have preclusive affect in New York.

Second, even if Full Faith and Credit did not apply and it was improper to afford such recognition to the Massachusetts decree, nonetheless, the New York courts could have honored the Massachusetts determination on the basis of comity. *Ehrlich-Bober & Co. v. University of Houston*, 49 N.Y. 2d 574, 427 N.Y.S. 2d 604, 404 N.E. 2d 726 (1980); *Will of Brown*, above. Simply put, no constitutional issue arises. [14]

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[14] Petitioner's arguments based upon alleged New York public policy are also misplaced. In *Baker v.* General *Motors Corporation*, 522 U.S. 222, 233, 118 S. Ct. 657, 663-64, 139 L. Ed.2d 580 (1998) this Court noted that its "decisions support no roving 'public policy exception' to the Full Faith and Credit due *judgments*." (emphasis in original)

WHEREFORE, the Petition for Certiorari should be denied.

Respectfully submitted,
Blank Rome Tenzer Greenblatt LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 885 – 5000

Birbrower, Montalbano, Condon
& Frank, P.C.
67 North Main Street
P.O. Box 1070
New City, New York 10956
(845) 634 – 7010

Co-counsel for Plaintiff-Appellants

Of Counsel:
Sheila Ginsberg Riesel
Leonard G. Florescue
Donald Frank
William Frank
Stephen McSweeney

No. 01-1038

In The

Supreme Court of the United States

October Term, 2001

ADMINISTRATION PROCEEDING ESTATE OF DEBRA LYNCH a/k/a Debra L. Lynch & Debra Franchi, Deceased,

DEAN LYNCH,

Petitioner,

– against –

PATRICIA FLAHERTY, LINDA A. KACEWICZ, AND MICHAEL P. FRANCHI,

Respondents.

On Petition for a Writ of Certiorari to The New York Court of Appeals.

APPENDIX

Appendix 1 1a
Dean Lynch Letters
[Pages 1a – 3a]

Dean Lynch
Attorney at Law

3-29-2001

Dear Mr. Frank:

In light of Mr. Uscher's "refreshed" recollection and that being the case, I believe I owe you an apology for my comment to you after the oral argument of 11-17-2000. It appears under the facts and circumstances of those years, I was "that stupid" in January, 1994.

Please accept my apology.

Very truly yours,

Appendix 1
Dean Lynch Letters

3-29-2001

Appellate Division, Supreme Court
Second Judicial Department
State of New York
45 Monroe Place
Brooklyn, NY 11201

Att: James Edward Pelzer, Clerk of the Court
Re: Estate of Debra Lynch
Docket No. 1999-09132

Dear Mr. Pelzer:

There is currently pending a Motion for Reargument which was returnable March 2, 2001. Included with my response was an Affidavit from Arthur Uscher, Esq. dated March 1, 2001.

I was advised today that Mr. Uscher's Affidavit at Par. 7 is in error as to his recollection. Therefore, I enclose for filing an Amended Affidavit from Mr. Uscher dated March 29, 2001.

It is noted that Mr. Uscher states that " I reviewed the tape. again and find I was mistaken in my recollection that Dean Lynch arrived '...shortly after the execution....' The tape shows that Dean arrived before the Will was executed."

I would point up to this Court that Mr. Uscher's original "recollection" was mine as well. The tape saying otherwise, would demonstrate that my recollection of the events of that day, January 3, 1994, may have been in error as well.

I continue to believe the 1994 alleged will is and has always been a "red herring" and has absolutely no bearing on the

issues before this Court. The most important issue being the death certificate and the legal finding that fraud is entitled to full faith and credit.

If this Court disagrees that the issue of the 1994 alleged will is a "red herring", I would respectfully request that the motion be held in abeyance until a copy and transcript of said tape can be obtained and reviewed by the parties and the Court.

Thank you for your attention to this matter.

Respectfully submitted,

Dean Lynch
Pro Se

cc: William Frank, Esq.
Arthur Uscher, Esq. wo/enc.

Appendix 2
Transcript of Proceedings on January 11, 1996
[Pages 4a – 27a]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
ORIGINAL

----------x

DEBRA LYNCH,

Plaintiff,

-against-

DEAN LYNCH,
Defendant.

----------x

ORDER

Index No. 1109/95

Rockland County Courthouse
New City, New York
Thursday, January 11, 1996

BEFORE:
THE HON. ALFRED J. WEINER,
Justice of the Supreme Court.

APPEARANCES:
SHAYS, KEMPER
Attorneys for Plaintiff
276 Fifth Avenue - Suite 306
New York, New York 10001-4509
BY: KENNETH D. KEMPER, ESQ.,
-and-
STANLEY D. HEISLER, ESQ.,
Of Counsel

DEAN LYNCH, ESQ.,
Defendant Appearing Pro Se ;
1 Kalisa Way - Suite 202

Paramus, New Jersey 07653-0159

BURKE & McGLINN, ESQS.,
Guardian Ad Litem
100 Washington-Avenue
Suffern, New York 10901
BY: JOSEPH P. McGLINN, ESQ., Of Counsel
Ellen L. Guardiano,
C.S.R., Senior Court Reporter.

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE.COURT OFFICER: Remain seated, please; come to order.

THE COURT: This matter has been scheduled for trial for -- I believe it was scheduled two days ago and there have been continuing discussions between the parties, both in chambers and out of chambers and the Court has been advised by counsel for the Plaintiff that the parties wish to place a stipulation on the record at this time.

Counsel may proceed.

MR. KEMPER: First, I would like to thank your Honor for your Honor's assistance in helping us resolve what has been a very difficult matter. And I'd also like to thank your Honor for bringing in, a guardian who also made very constructive suggestions in helping us to dispose of this.

I would like you, Debra and Mr. Lynch to listen to this very carefully.

It is stipulated and agreed between the parties as follows: The Defendant withdraws his answer to the verified complaint and the Plaintiff withdraws her second cause of action

and agrees to proceed on her first cause of action for constructive abandonment.

The judgement of divorce to be entered herein will not be entered until confirmation of the stipulation of settlement which is .as follows:

1. The Plaintiff agrees to transfer her interest in the marital residence located at 101 Greenbush Road, Tappan, New York to the Defendant by deed and the Defendant agrees to transfer his interest in the Worcester condominium owned by the parties to the Plaintiff.

2. The Plaintiff waives her interest in equitable distribution and for a distributive award with respect to the residence and Defendant's law practice and any other assets of the Defendant. The Defendant waives his interest in equitable distribution or by way of distributive award with respect to Plaintiff's separate property and any appreciation thereto.

3. The Defendant will receive and own all of the contents of the marital residence

Appendix 2
Transcript of Proceedings on January 11, 1996

at 101 Greenbush Road, Tappan except for the agreed-upon list of property as follows, which shall be the possession of the Plaintiff and may be removed on 20 day's notice:

Those items are paintings by the Plaintiff, an antique painting at the front door, her mother's jewelry, Christmas dishes, Madeline's Christmas dress, linen closet, Madeline's baby book, photo albums, a jewelry box, a Lladro ballerina statue, sculptures made by steel or in good shape, garden winter sweater and a heart sweater and the pictures to be retained, to be excluded, by the Plaintiff, are pictures of boats and water scenes, a portrait of the, husband and a self-portrait of the Plaintiff which has been given to her daughter. Also remaining is a handmade paper artwork and a plexiglass display case which was in the marital residence and will go to the parties' daughter.

4. The Court, on consent, will appoint Joseph McGlinn of Burke & McGlinn as guardian for the property of the child, Madeline Susan

-Lynch v Lynch-

Lynch, age eight. Mr. McGlinn will undertake an investigation to ascertain the value of all remainder interests in --

THE COURT: Excuse me, I hate to interrupt, but just for one second, maybe you should indicate that he's appointed as guardian ad litem. He's not been appointed guardian of the property.

MR. KEMPER: Fine.

THE COURT: If the parties wish to subsequently --

MR. KEMPER: Fine, Judge.

THE COURT: -- the parties may consent to him being appointed as guardian of the property.

MR. KEMPER: Being appointed as guardian ad litem in this proceeding Mr. McGlinn will undertake an investigation to ascertain the value of all remainder interests in inalienable trusts of Debra Lynch and the 1/4 of 1% interest in the Sea Breeze property owned by Madeline Lynch, all whether held directly or indirectly. The guardian ad litem shall have authority to obtain information,

Appendix 2
Transcript of Proceedings on January 11, 1996

review and hire experts to determine the value of the interest. The guardian shall report to the Court with recommendations as to the proposed stipulation of settlement renouncing Madeline's remainder interests in the inalienable trusts and her 1/4 of 1% interest in Sea Breeze as to whether the child's best interests are being served by the renunciation of her rights. If approved by the Court, a judgment shall issue respecting the renunciation of those rights.

The proposed settlement in exchange for the renunciation as as follows: A $1,000,000 irrevocable trust will be created for the sole benefit of Madeline Lynch with the income only payable to Debra Lynch as hereinafter set forth. This trust to be funded with an initial payment of $400,000 to be paid within 60 days of approval by this Court of the. settlement with the remaining funds to be contributed at the rate of at least $100,000 per annum to be guaranteed by letter of credit from a reputable banking institution. The trustee of the trust shall be the U.S. Trust

-Lynch v Lynch-

Company in New York which shall also manage the portfolio of the trust corpus.

The fee of Joseph McGlinn, Esquire as guardian ad litem shall be paid as ultimately determined by this Court. All income from the trust shall be paid during her life to Debra Lynch for her support and maintenance. If the necessary and appropriate expenses of Debra Lynch exceed the annual income of the trust the trustee shall advance future trust income to meet those expenses and then accumulate income thereafter to make up for any expenses advanced so that ultimately the principal amount of $1,000,000 remains inviolate.

The trust shall have the right, upon application, to pay £or the college and graduate school expenses of the child Madeline. The trust shall accumulate all other income except the income from the trust shall be payable to Madeline Lynch after her. 21st birthday. Principal distributions along with accumulated income from the trust shall be paid to Madeline at the rate of 25% at age

Appendix 2
Transcript of Proceedings on January 11, 1996

21, 25% at age 25, 25% at age 30 and 25% at age 35. If Madeline dies with issue, prior to completion of payments, .any unpaid payments shall go equally to said issue and if Madeline dies without issue any unpaid payments shall go to a foundation for the benefit of children : such as Hale House or other similar charity.

The current custody order in effect shall be entered as a final order along with the visitation orders now .in existence, provided, however, that the visitation bond order by Justice Kenneth Rudolph on May 25, 1995 shall be vacated forthwith and the bond that has been posted shall' be returned.

Given the financial and other personal circumstances of the parties each of the parties waives maintenance and Defendant waives receipt of child support to the fullest extent permitted by law and agrees to accept what is provided in the Child Support Standards Act as the minimum payment payable, which is the amount of $25 monthly, as and for child support. The New Jersey action pending, between the parties shall be withdrawn along

-Lynch v Lynch-

with the appeal and the current order with respect to the opening and access to the safe deposit box of the Plaintiff shall be dismissed.

Your Honor, that completes the stipulation of the parties.

THE COURT: Off the record.

(There was a discussion held off the record)

MR. KEMPER: . It has been agreed by the parties that in the event the report of the guardian ad litem approves the renunciation of Madeline's residuary rights{ the parties agree that there will be commenced in the Surrogate's Court in this County a proceeding seeking to have Mr. McGlinn appointed as guardian of the property of the child for further approval by the Surrogate's Court of the settlement and renunciation of rights.

THE COURT: Off the record.

(There was a discussion held off the record)

MR. KEMPER: I'll call Debra Lynch to the witness stand.

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Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE COURT: If it's easier for her(she can sit right there. It's not necessary for her to step up.

DEBRA LYNCH(the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

THE COURT: Please state your name and address.

MS. LYNCH: Debra Lynch, 16 Westcliff Road, Weston(Massachusetts.

THE COURT: Thank you very much.

MR. KEMPER: Mrs. Lynch, you are the Plaintiff in this proceeding; is that correct?

MS. LYNCH: Yes.

MR. KEMPER: And were you and Mr. Lynch married in a religious ceremony on the 1st day of August, 1981 in Weston, Middlesex County, Commonwealth of Massachusetts?

MS. LYNCH: Yes.

MR. KEMPER: And ever since you and he have been husband and wife; is that correct?

MS. LYNCH: Yes

MR. KEMPER: And for more than two years prior to the commencement of this action

-Lynch v Lynch-

continuously was Mr. Lynch a resident of the State of New York?

MS. LYNCH: Yes.

MR. KEMPER: And did you and Mr. Lynch live within the State of New York as husband and wife?

MS. LYNCH: Yes.

MR. KEMPER: Is there one child of your marriage, a daughter, Madeline, born August 31, 1987?

MS. LYNCH: Yes.

MR. KEMPER: And is it true that no decree of divorce, annulment or separation has been obtained by you against Mr. Lynch or by him against you in any Court of competent jurisdiction of this state or any other state, territory or dependency of the United States or in any foreign country?

MS. LYNCH: Yes.

MR. KEMPER: And is it true, to the best of your knowledge, that no other action is now pending between you and Mr. Lynch for a divorce, annullment or separation in the Courts of New York or in any other state or

Appendix 2
Transcript of Proceedings on January 11, 1996

territory or dependency of the united States or in any foreign country?

MS. LYNCH: Yes.

MR. KEMPER: And were both you and Mr. Lynch over the age of 18 at the time that this divorce action was commenced?

MS. LYNCH: Yes.

MR. KEMPER: And will you take all steps within your sole power, prior to entry of a judgement of divorce, to remove any barriers to Mr. Lynch's re-marriage?

MS. LYNCH: Yes.

MR. KEMPER: Now commencing in or about the fall of 1992 and continuing to the present time did Mr. Lynch wilfully refuse to engage in marital relations with you despite your requests that he engage in marital relations?

MS. LYNCH: Yes.

MR. KEMPER: And was his refusal to engage in marital relations by you not caused by any physical impediment on his behalf?

MS. LYNCH: Yes.

MR. KEMPER: And was his action in that regard unjustified in all respects?

-Lynch v Lynch-

MS. LYNCH: Yes.

MR. KEMPER: And has that abandonment of you continued for more than a year prior to the commencement of this action?

MS. LYNCH: Yes.

MR. KEMPER: And do you ask that this Court grant you a .judgement of divorce and further provide you with the relief agreed to in the stipulation that we placed upon the record settling this proceeding?

MS. LYNCH: Yes.

MR. KEMPER: Now you've had a chance to hear me read the stipulation and agreement; is that correct?

MS. LYNCH: Yes.

MR. KEMPER: And you've had an opportunity to review it with me and with Mr. Heisler?

MS. LYNCH: Yes.

MR. KEMPER: And you've also had an opportunity over the last several days to discuss it with your. father who is present?

MS. LYNCH: Yes.

MR. KEMPER: And with your sister Linda

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Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-,

who is present?

MS. LYNCH: Yes.

MR. KEMPER: And your sister Patty?

MS. LYNCH: Yes.

MR. KEMPER: And you rely on their advice and wisdom and counsel in assisting you to make these determinations?

MS. LYNCH: Yes.

MR. KEMPER: And did you make this agreement of your own free wi11?

MS. LYNCH: Yes.

MR. KEMPER: And no one forced you to do anything?

MS. LYNCH: Yes.

MR. KEMPER: Or made you any promises to make you enter into this if you did not want to; is that correct?

MS. LYNCH: Yes.

MR. KEMPER: And you're satisfied that this takes adequate care of your daughter?

MS. LYNCH: Yes.

MR. KEMPER: Now you have not taken today any alcohol or medication which would impair your judgment; is that correct?

-Lynch v Lynch-

MS. LYNCH: Yes.

MR. KEMPER: And you're doing this of your own free will?

MS. LYNCH: Yes.

MR. KEMPER: I have no further questions of the witness, your Honor.

THE COURT: Mr. Lynch, do you have any questions?

MR. LYNCH: I have no questions.

THE COURT: I'd just like to ask you, Ms. Lynch do you have any questions of the Court at this time?

MS. LYNCH: No.

THE COURT: Are you satisfied with the stipulation that has been entered into?

MS. LYNCH: Yes.

MR. KEMPER: Do you want me to do voir dire of Mr. Lynch or do you want to do it?

Why don't you do it? He can be sworn from his seat.

DEAN LYNCH, the Defendant herein, having been first duly sworn, was examined and testified as follows:

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE COURT: please state your name and address for the record.

MS. LYNCH: Dean Lynch, 101 Greenbush Road, Tappan, New York.

MR. KEMPER: Mr. Lynch, you've heard the stipulation entered into on the record today?

MR. LYNCH: Yes.

MR. KEMPER: And you've had an opportunity to consult with your own independent counsel with respect thereto?

MR. LYNCH: Yes.

MR. KEMPER: And. :you are an attorney; are you not, sir?

MR. LYNCH: In the State of New Jersey, yes.

MR. KEMPER: And you've had a chance to reflect upon the various terms which we've negotiated over the course of the last three days, I believe?

MR. LYNCH: Yes.

MR. KEMPER: And are you satisfied with the terms of that agreement?

MR. LYNCH: Yes, I am.

MR. KEMPER: Are you entering into this

-Lynch v Lynch-

agreement of your own free will?

MR. LYNCH: Yes.

MR. KEMPER: .And is it true that no promises have been made to you other than the agreements made in the stipulation which has been placed on the record?

MR. LYNCH: Just the agreement here.

MR. KEMPER: And you have not taken today any drugs or alcohol which would affect your judgment or prevent you from entering freely into this agreement; is that correct?

MS. LYNCH: No.

MR. KEMPER: Your Honor, I would move for a judgement of divorce in the Plaintiff's favor --

THE COURT: I just want to --

MR. KEMPER: -- incorporating--

THE COURT: Off the record.

(There was a. discussion held off the record)

MR. KEMPER: I would move at this time for a judgement of divorce incorporating by reference the terms of the stipulation that we placed upon the record and providing for that

Appendix 2
Transcript of Proceedings on January 11, 1996

to survive. I would ask that the Court retain continuing, jurisdiction of this matter and leave this matter further open awaiting the report of Mr. McGlinn with respect to the matters that have been assigned to him so that we can finally conclude this proceeding.

I would also ask that your Honor sign forthwith an order directing the County Clerk to release the bond which is now held by the Rockland County Clerk.

THE COURT: Mr. Lynch, did you understand the. application that was just made?

MR. LYNCH: Yes. As to the release of the visitation bond.

THE COURT: Well, no. That was the second part of the application. It was a two-part application.

MR. LYNCH: The first part, yes, concerning Mr. Lynch awaiting the outcome as to the settlement of the guardian ad litem; otherwise, the divorce is final as to those issues.

THE COURT: Would the Reporter read back the application, please?

-Lynch v Lynch-

(Record read)

THE COURT: o you understand the application that's been made?

MR. LYNCH: Your Honor, what I understood is what we have in the stipulation, that the judgement of divorce will not be entered until the confirmation that we've agreed to. If the incorporation of that --

THE COURT: Just go a little slower.

MR. LYNCH: If the incorporation that we're entering, the divorce, enters that language, which is the second paragraph of the stipulation, the judgement of divorce will not be entered until confirmation of the stipulation of settlement, which is follows:

So as-far as the issue that your Honor -- we discussed in chambers, the issue of fault, that issue has been resolved as to the divorce going forward but the issues that. need to be confirmed are the application of the settlement is my understanding of the facts. And as to the second issue, as to the release of the visitation bond, I have no objection.

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE COURT: Based upon your understanding is there any opposition to the application?

MR. LYNCH: There is --

THE COURT: Both parts of the application.

MR. LYNCH:' The part of the application that the judgment will not be entered itself?

THE COURT: Right.

MR. LYNCH: Until confirmation is completed?

THE COURT: That is the understanding of the Court.

MR. LYNCH: And that, I confirm, is what my understanding is as well.

THE COURT:-- You have no opposition?

MR. LYNCH: I have no opposition- to that.

THE COURT: And you have no opposition to the bond being released?

MR. LYNCH: No, your Honor.

THE COURT: Or vacated?

MR. LYNCH: No, your Honor.

THE COURT: Is there anything further?

-Lynch v Lynch-

MR. KEMPER: No, Judge.

THE COURT: I just want to mention --

MR. KEMPER: I would like your Honor, on the record, to grant the application for the divorce so we've got that done.

THE COURT: The application is granted.

I just wanted to mention, Mr. Lynch, that you have spent a great deal of time before this Court in chambers with. counsel, alone and you are an attorney who practices in the State of New Jersey, you're not being presently represented by counsel, I did recommend to you this morning that you seek. to consult with an attorney acquaintance of yours -- who is that, please?

MR. LYNCH: I had spoken with a. Mr. Ciganek; I didn't get ahold of him.

THE COURT: You attempted to call up Mr. Ciganek this morning.

I also recommended to you that you -- I certainly recommended to you this morning that you get an attorney to represent you, that you should not represent yourself in this matter; is that correct?

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

MR, LYNCH: That's -- absolutely,

THE COURT: And you've chosen to speak to someone on the telephone --.

MR. LYNCH: Yes, your Honor.

THE COURT: -- you attempted to reach another attorney but you did decide of your own volition to proceed unrepresented this morning by another attorney; is that correct?

MR. LYNCH: Yes, your Honor. If your Honor would like me to state what my understanding is and have Mr. Kemper confirm it, I'd.be happy to.

THE COURT: I don't think that's necessary. I don't think it's necessary.

All right. That will conclude the proceedings –today.

The court reporter shall prepare a transcript of the stipulation; the costs shall be borne equally by the parties. The Court shall be provided with a copy of same and a copy shall be provided for Mr. McGlinn, who is acting as guardian ad litem and the case will be adjourned for 30 days for calendar purposes only so that Mr. McGlinn can commence and

-Lynch v Lynch-

complete his investigation and file his report with the Court. If the report is filed prior to 30 days the Court will bring the matter in for a conference as well as a statement by the guardian ad litem. If for some reason' there's some delay, then Mr. McGlinn will advise the Court as to the circumstances of the delay and the Court will determine whether or not the matter should come in within the thirty-day period or not.

Off the record.

(After an off-the-record discussion the proceedings were adjourned)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE WITHIN PROCEEDINGS.

_____

ELLEN L. GUARDIANO, C.S.R., R.P.R.

Dated: January 12, 1996

Appendix 3
McGlinn Affirmations
[Pages 28a – 35a]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ROCKLAND

----------x

DEBRA LYNCH,

Plaintiff,

-against-

AFFIRMATION IN RESPONSE TO CROSS MOTION

Index No. 1109/95

DEAN LYNCH,

Defendant.

----------x

Joseph P. McGlinn attorney duly admitted to practice law in.the State of New York hereby affirms that the following statements are true under the penalty of perjury.

I am the Guardian ad Litem for Madeline Lynch in the above captioned action and make this affirmation in response (not necessarily in opposition) to the cross motion submitted by affidavit of William Frank, Esq. To paraphase my last resort as Guardian ad Litem I do not oppose the procedure of establishing a trust fund for my ward in exchange for a renunciation of her interest in the various trusts—I do not recommend that the trust be established in the sum of $1 million. It is my opinion that the one-fifth interest in the trust now owned by Madeline Lynch has a value far in excess of $1 million. The simple problem today is the mechanics of establishing the value of Madeline Lynch's interest and the procedure for payment of the expenses in connection with the valuation.

If the opinion of the court on these various motions is that the actions have abated then no further steps will be taken in connection with the trusts and Madeline Lynch will continue to have a 20% interest therein.

If it is the opinion of the court that the actions have not abated then the valuation of the trusts for-the purposes of authorizing a renunciation of the remainder interest is still at issue. At the present time it is my recommendation that the proposed figure of $1 million for the establishment of the settlement trust not be approved.

If the Court is in agreement with my recommendation in *not* approving the $1 million for the establishment of the settlement trust, then a procedure will have to be established for the valuation of the various trusts for the purpose of placing a settlement figure that hopefully will be acceptable to the undersigned as well as the court.

Appendix 3
McGlinn Affirmations

Independent auditors/accountants will be required to review the books and records of the various properties of each trust in order to determine their value. This will more than likely require the appraiser to inspect the books and records and the various properties themselves in New England, all at a considerable expense.

Interestingly, of all the papers submitted on the recent motions, none of the motions contain any suggestion as to the source of the funds to cover the expenses in placing value on the various trusts.

In the last two and one half years your deponent has spent more than 100 hours in this litigation and has expended the sum of $1,300 for one accountant's opinion, which formed the basis of my recommendation to disprove the $1 million settlement trust.

If negotiations are to continue on behalf of Madeline Lynch with the Franchi family members (the other remainderpersons of the trusts), then a method has to be determined as to the source of the funds to pay the expenses of an appraiser. It is my suggestion that the trusts themselves be the source of these funds.

Assuming an appraiser determines that figure in excess of $1 million is an inappropriate sum for Madeline Lynch to renounce her remainder interest, there is no assurance that this sum will be acceptable to the "plaintiff" or the plaintiff's estate--assuming there is one. This brings up the next question as to who is the spokesperson for the deceased plaintiff and who is (are) the true party (parties) in interest in the litigation. Clearly William Frank does not represent Debra Lynch -- she is deceased. At the present time, upon information and belief, no fiduciary has been appointed for Debra Lynch and there has been no indication as to the value of the estate of Debra Lynch.

Any resolution of this litigation by way of the establishment of a settlement trust for Madeline Lynch will

inure to the benefit of the other remainderpersons of the Franchi Family Trusts. Each other remainderperson currently has a 20% interest in the trusts. Upon the filing of a renunciation on behalf of Madeline Lynch their interest will automatically increase from 20% to 25% each.

In reality what is proposed by way *of* settlement of the divorce action is a purchase of Madeline's interest in the trusts by or on behalf of the other remainderpersons.

If an acceptable figure can be agreed upon with the assistance of a thorough and complete analysis and appraisal of the trust assets it would be my recommendation that a settlement trust be created. In the meantime I oppose the entry of a judgment of divorce until:

(1) An appraiser/accountant/financial analyst be designated (preferably upon consent of all parties).

(2) That fees be advanced (presumably from the trusts themselves) to pay all fees and disbursements incurred by your deponent to date.

(3) That funds be set aside and segregated for the payment of professional fees in connection with the appraisal.

(4) If your deponent and representatives of the plaintiff can agree on a settlement trust figure, that the settlement figure be delivered in escrow to William Frank, Esq.

I point out that in the event the action has abated, Madeline Lynch continues with her 20% interest in the trust and/ or in the event the parties cannot agree on a trust

settlement figure, Madeline Lynch would continue to be a 20% owner of the various trusts. Her interest in the trusts could be enforced by the appointment of a guardian of her property in the State of Massachusetts—presumably her father, Dean Lynch.

s/_____
Joseph P. McGlinn

Sworn to before me this
16th day of June 1998
Dated: June 16, 1998

s/_____
Patricia K. Meehan
Notary Public, State of New York
No. 01ME5063427
Qualified in Rockland County
Commission Expires July 22, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

PATRICIA FLAHERTY, LINDA A. KACEWICZ, and MICHAEL P. FRANCHI, as Executors of the Estate of DEBRA LYNCH,

Index No. 1109/95

Plaintiffs,

-against-

DEAN LYNCH,

Defendant,

AFFIDAVIT OF GUARD AD LITEM IN OPPOSITION TO RELIEF REQUESTED IN ORDER TO SHOW CAUSE

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

Joseph P. McGlinn, being duly sworn deposes and says;

I am the Guardian ad Litem for Madeline Lynch in the above captioned matrimonial action. This affidavit is made in response to the relief requested in the Order to Show Cause to the relief requested in the Order to Show Cause signed by Hon. William E. Sherwood, JSC and dated August 1, 2000. In my capacity as Guardian ad Litem for Madeline Lynch I oppose the relief requested in the Order to Show Cause.

The court rendered a decision/order dated, July 17, 2000 granting the plaintiff's motion for the entry of a judgment of divorce nunc pro tunc upon the condition that the

trust for the benefit of Madeline Lynch has been established and funded. I am in agreement with that decision.

Whether or not the defendant agreed or did not agree "with plaintiff's request" is not the issue. The issue is whether or not the plaintiff is entitled to a judgment of divorce nunc pro tunc.

The so called "modifications to the stipulation" are all for the benefit of Madeline Lynch and are otherwise simply necessary draftsmanship issues to have the trust established. Obviously 100% of the terms of the trust were not dictated when the action was settled on January 11, 1996. The proposed trust has undergone various language revisions over the past several years.

To clarify the record, Paragraph 4 of defendants affidavit submitted in support of the order to show cause incorrectly quotes me. The substance of my conversation with Mr. Lynch on July 20,2000 was that. if he believed the court to be in error that he first attempt to proceed by letter and not by order to show cause.

Clearly the defendant consented to the entry of a judgment of divorce in open court on January 11,1996 (see settlement stipulation).

Since my ward is not renouncing any interest in the various Franchi family trusts there is no reason, at this stage, to ascertain values.

Whatever interests Madeline Lynch has in the trusts, she continues to retain. Whatever interest she may have in her mother's estate she continues to retain.

WHEREFORE, it is respectfully requested that the relief requested in the order to show cause dated August 1, 2000 be denied.

s/_____
Joseph P. McGlinn

Sworn to before me this
1st day of August, 2000

s/_____
Patricia K. Meehan
Notary Public, State of New York
No. 01ME5063427
Qualified in Rockland County
Commission Expires July 22, 2001

Appendix 3
Report of Orville H. Mann, Jr.
[Pages 36a – 40]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----------x

PATRICIA FLAHERTY, LINDA A. KACEWICZ and MICHAEL P. FRANCHI as Executors of the Estate of DEBRA LYNCH,

Plaintiff,

-against-

PRELIMINARY REPORT OF SUCCESSOR GUARDIAN AD LITEM

Index No. 1109/95

DEAN LYNCH,

Defendant, pro se.

----------x

I was appointed Successor Guardian ad litem in the above entitled divorce action to represent the interests of Madeline Lynch pursuant to Order of this Court dated August 16, 2000.

A Motion for an Order directing entry of a Judgment of Divorce

in the above action was brought on by the Plaintiffs by Notice of Motion dated January 13th, 2000. By virtue of this Court's Order dated August 22nd, 2000 vacating an earlier Order of the Court dated July 17th, 2000, the Plaintiffs' Motion is still pending and is returnable September 22nd, 2000.

Since my appointment as Successor Guardian I have reviewed a tremendous number of documents pertaining to this case. It has been a daunting task to assimilate all of the facts and issues set out in the pleadings, motions, affidavits, reports and other documents filed in this case and as of this

date I am not completely satisfied that I have all the information I need to properly represent the interests of my ward. I have not yet reviewed, for example, the Federal Estate Tax Return filed in the Estate of Debra Lynch, (although the contents of the return were summarized for me over the phone), copies of the family Trusts in which Madeline became a discretionary beneficiary on her mother's death and the records and conclusions of the accountant retained by Joseph McGlinn, Esq. I also have not yet taken into my possession and reviewed Mr. McGlinn's files, notes and memoranda on this case. There may be some thoughts and insights set down by Mr. McGlinn in those records which would be helpful to me. I do feel, however, that I have assimilated enough of the facts of the ease to represent the interests of my ward in connection with the pending motion. In this connection, I would like to thank Dean Lynch, Esq. and Wiliam Frank, Esq. for their help in familiarizing me with the facts in this case and providing me with copies of some of the documents pertaining to the case. I would also like to thank Robert Berliner, Esq. for assembling all the files for me and providing a quiet space at the Courthouse for me to review those files.

It is my position that the Plaintiff's motion for entry of a Judgement of Divorce should be granted. But for the unilateral modification of the Stipulation of Settlement waiving the requirement that the infant renounce her interest in various family Trusts, it seems clear from the cases cited by Plaintiffs that Debra Lynch is entitled to a Judgment of Divorce. The transcript of the Stipulation of Settlement at page 21. shows that the application for the divorce was granted wit the consent of Mr. And Mrs. Lynch subject to approval by the then Guardian ad litem. Although the then Guardian ad litem initially disapproved of the settlement, after the Plaintiffs waived the requirement that the infant renounce her interest in the family Trusts, the Guardian

changed his position and submitted an Affidavit to the Court sworn to August 1st, 2000 supporting the granting of the Plaintiff's Motion for entry of a Judgment of Divorce nunc pro tunc. Mr. McGlinn makes the point in his Affidavit that the modification to the Stipulation was for the benefit of Madeline Lynch. Not only is that true, but it also appears to me that the waiver by the Plaintiffs clearly benefits Dean Lynch, Esq. or at least does not harm or prejudice him. Mr. Lynch currently has the sole legal obligation for his daughter's support. Waiver of the renunciation improves his daughter's financial position, thereby indirectly benefiting Mr. Lynch.

Mr. Frank in his Affirmation dated August 10th, 2000 summarizes the arguments as to why the modification should not defeat the plaintiff's right to entry of a Judgment of Divorce and the arguments seem persuasive to me. To argue that a modification in the Stipulation that not only does not harm the Defendant, but actually benefits him, should be the basis for denying the Plaintiff the divorce which both parties had previously stipulated to and had been granted by the Court, elevates form over substance.

Assuming this Court grants the Plaintiffs' Motion, there are difficult issues remaining which need to be resolved pertaining to the funding of the Million ($1,000,000.00) Dollar settlement. I disagree with Mr. Frank that the source of the funds comprising the Million ($1,000,000.00) Dollar Trust are irrelevant. Mr. McGlinn makes the point in his Affidavit of January 19th, 2000 that he opposes the procedure for the establishment of the Trust because it was not clear to him where the money would come from to fund Trust. The fact that the source of the funds used to fund the Trust is relevant as far as the infant is concerned can be demonstrated by the following examples:

Appendix 3
Report of Orville H. Mann, Jr.

1. Assume that the Estate of the deceases was Seven Hundred and Fifty Thousand ($750,000.00) Dollars at the time of her death on September 5th, 1996. Assume further that in the past four years, the Estate has earned income which, after paying income taxes, has been reinvested and further that the assets of the Estate have appreciated so that the total value of the Estate at the present time is One Million ($1,000,000.00) Dollars. If Madeline's Trust is to be funded only with the One Million ($1,000,000.00) Dollars from the Estate, Madeline benefits only to the extent of Seven Hundred and Fifty Thousand ($750,00.00) Dollars or to put it another way, Madeline is funding the Trust with Two Hundred and Fifty Thousand ($250,000.00) Dollars of her own money.

2. Assume for the moment that the money or part of the money to fund the Trust comes from family Trusts of which Madeline is a potential discretionary beneficiary. If the Trustees of those Trusts contribute funds to make up the One Million ($1,000,000.00) Dollars for Madeline, they might be disinclined to consider Madeline for further discretionary distributions from the Trusts. Again, Madeline is in effect funding her own Trust to the extent that she loses out on possible future discretionary distributions from the Trusts.

Appendix 3
Report of Orville H. Mann, Jr.

Although I agree with the establishment of the Trust for my ward as part of the settlement, I would like to understand where the money is coming from which will be used to fund the Trust or, alternately, where the money is not coming from, and whether the source of the funding of the Trust is in the best interests of my ward.

Dated: September 15, 2000

Respectfully submitted

s/_____
Orville H. Mann, Jr., Successor Guardian ad litem

Appendix 4
Chronology of Key Events/Documents
[Pages 41a – 44a]

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
CHRONOLOGY OF KEY EVENTS/DOCUMENTS

9/5/96	Debra Lynch died, domiciliary of Massachusetts
7/22/97	Last Will and Testament dated June 28, 1995 filed in Middlesex County Probate and Family Court
10/20/98	Massachusetts counsel goes to above Probate Court to commence Probate proceedings, for appointment of Temporary Executors - court clerk assigns date of appearance for appointment of Temporary executors: November 24, 1998
10/20/98	Patricia Flaherty executes affidavit as petitioner for appointment as Temporary executrix
11/4/98	Executors serve all interested parties (including Dean Lynch) with Notice of Motion for appointment of Temporary executors
11/6/98	Dean Lynch files Petition for Letters of Administration in Rockland County Surrogates Court. - alleges that the decedent's 2 prior wills of Dec. 1993 and June 1995 are invalid.
11/16/98	Dean Lynch writes to Clerk of Massachusetts Probate Court. Acknowledges commencement of Probate proceedings therein, and requests

Appendix 4
Chronology of Key Events/Documents

	Court to recognize its lack of jurisdiction, set the matter down for a full hearing.
11/19/98	Petition (NEW YORK) dismissed for failure to annex wills.
11/23/98	Dean Lynch files Amended Petition for Letters of Administration, annexing copy of above 2 wills, and swearing to existence of no other wills after conducting due, diligent search.
11/24/98	Temporary Executors appointed in Massachusetts Probate Court
11/25/98	Original certificate of appointment of temporary executors by Massachusetts Probate Court filed' with Rockland County Surrogate
1/21/99	Dean Lynch files Notice of Special Appearance and Affidavit of Objections to Petition in Massachusetts Probate Court
02/22/99	Motion to extend appointment of tem executors granted by Massachusetts Probate Court
3/1/99	Copy of extension of appointment as temporary executors in Massachusetts filed with Rockland County Surrogate
3/8/99	Motion to extend appointment of temporary executors granted by Massachusetts Probate Court

Appendix 4
Chronology of Key Events/Documents

3/23/99	Copy of extension of appointment as temporary executors in Massachusetts filed with Rockland County Surrogate
3/29/99	Dean Lynch files Second Amended Petition for Letters of Administration
4/8/99	Temporary Executors of Estate of Debra Lynch move in Rockland County Surrogates Court to intervene and to dismiss Amended Petition and Second Amended Petition for Letters of Administration
5/17/99	Motion to extend appointment of temporary executors filed with Massachusetts Probate Court; service of same on Dean Lynch
6/3/99	Letter by Massachusetts counsel to Dean Lynch advising him that the Massachusetts Probate Court has ordered a pretrial conference for June 15, 1999 and that Court will be sending notice to all parties
6/3/99	PreTrial Notice & Order issued by Massachusetts Probate Court and sent to Dean Lynch. - Notice & Order stated that the case might be ordered to immediate trial on the date of the Pre-Trial.
6/10/99	Dean Lynch writes to Massachusetts Probate Court. stating: "I am in receipt of the Pre-Trial Notice & Order dated June 3, 1999 as to the above captioned matter." In said letter, Mr. Lynch advises Court that it has no jurisdiction over him or his daughter, and that he had made

Appendix 4
Chronology of Key Events/Documents

a "special appearance" to contest jurisdiction. He state that he would not attend any such conference due to his "special appearance."

Asks Court to take no action until issues are litigated in New York.

6/14/99 Dean Lynch writes again to Massachusetts Probate Court (sent by Fax)- advises Trial Dept. that he will not be appearing on June 15, 1999; that the Rockland County Surrogates Court has not yet made a decision as to his Petition for Letters of Administration, and that based on principles of conflict of laws, the Estate process, having been commenced earlier in time in NEW YORK must be resolved first in NEW YORK. Requests that Court take no action until then, and advised that he means no disrespect by his failure to appear.

6/15/99 Massachusetts Probate Court. admits Will to Probate and grants appointment of Executors of the Estate

9/8/99 NEW YORK Proceeding for Letters of Administration dismissed for lack of jurisdiction as Will admitted to Probate and executors have been appointed.

Appendix 5
Dean Lynch Letter to Probate Court
[Pages 45a – 46a]

11-16-98

Clerk of the Court
Middlesex Probate and Family Court
208 Cambridge Street
East Cambridge, Massachusetts 02141

Re: Estate of Debra Lynch
Docket No. 97P3465

Dear Clerk:

I am the husband of Debra Lynch and father of Debra's daughter Madeline, who is 11 years old.

I understand from the enclosed copies of letters from Mr. McGlinn dated 11-9-98 and Mr. Frank dated 11-13-98 that my in-laws have retained the firm of Lourie & Cutler to probate an alleged "Will" of my wife. I have not been served with any papers as to any action in your Court either as surviving spouse or guardian of Madeline.

I also enclose copy of letter sent to you on 9-13-96 from David Howe, Esq. as to this matter which it appears you have chosen to disregard.

I can only assume that the false death certificate with the misrepresentations of Mrs. Flaherty dated 9-9-96 was used to file in your Court. Not only was Debra not "divorced" but she was not a resident of "Weston, Middlesex. Mass." Your Court has no jurisdiction over this matter and any acts are and will be ultra virus.

I enclose for your review copy of my Petition for Letters of Administration which has been filed in Rockland County,

Appendix 5
Dean Lynch Letter to Probate Court

New York. In order to give you a clear picture of the facts and circumstances of the situation I also enclose copies of letters to the Appellate Division-Second Judicial Department, and Surrogate where jurisdiction is properly placed. In addition, I enclose the "Statement of Facts" from the Appellate Brief to give you a point of reference as to the facts in time starting in 1981.

It is respectfully requested that your Honorable Court recognize it's lack of jurisdiction, or in the alternative set the matter down for a full hearing as to the issue of jurisdiction including the factual findings as to competency and residency.

I would point up that in light of the fact I have not been served that any action by your Honorable Court is in violation of the due process clause of the United States Constitution.

Please act accordingly.

Respectfully submitted,

Dean Lynch
Husband of Debra Lynch, pro se

cc wo/enc.; Appellate Division-Second Judicial Department
Hon. Alfred J. Weiner
Lourie & Cutler
William Frank, Esq.
Shays, Kemper
Joseph McGlinn, Esq.

Appendix 6
Decision and Decree of Massachusetts Probate Court
[Pages 47a – 48a]

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION DOCKET NO. 97P3465

IN RE: ESTATE OF DEBRA LYNCH

MEMORANDUM OF DECISION

Respondent, Dean Lynch, the objecting party having failed to appear for pre trial on June 15, 1999; and

Respondent having sent a letter to the Trial Department of this Court dated June 10, 1999 in which he, a lawyer by profession, raises the issue of the jurisdiction of this court when the issue, if any, whether or not the court has jurisdiction over Respondent; and

The pre trial notice having specifically stated that the case may be ordered to immediate trial on the date of pre trial if it appears to the court that one party, through a failure to appear at the Pre Trial Conference or otherwise will not present a case;

the respondent not having raised the conventional objections, viz the issue of domicile or invalidity of the will due to undue influence, lack of capacity or improper execution, the court finds that he will not present a case and thus orders that the Will be allowed and the executors be appointed.

6/15/1999
Date

s/_____
Beverly Weinger Boorstein
Judge of Probate and Family Court

Appendix 6
Decree

Commonwealth of Massachusetts
The Trial Court
MIDDLESEX Division — Probate and Family Court Department — Docket No. 99P3465

Probate of Will With/Without Sureties

Name of Decedent Debra Lynch a/k/a Debra L. Lynch

Domicile at Death 16 Westcliff Road, Weston, Middlesex, MA 02493
(Street and No.) (City or Town) (County) (Zip)

Date of Death September 5, 1996

Name and address of Petitioner(s) Patricia Flaherty 111 Rockland Street, Natick, MA 01760; Linda A. Kacewicz 225 Narragansett Bay Avenue, Warwick, RI 02889; Michael P. Franchi 24 Perkins Street #C-2, Jamaica Plain, MA 02130 Status Siblings/Named Executors
Named Temporary Executors

Heirs at law or next of kin of deceased including surviving spouse:

Name	Residence (minors and incompetents must be so designated)	Relationship
Madeline S. Lynch	101 Greenbush Road, Tappan, NY 10983	Daughter (minor)

That said deceased left a will — ~~and codicil(s)~~ — herewith presented, wherein your petitioner(s) is/are named ~~executor~~ temporary and permanent Executors and wherein the testat rix had requested that your petitioner(s) be exempt from giving surety on his/her/their bond(s).

[X] The petitioner(s) hereby certify that a copy of this document, along with a copy of the decedent's death certificate has been sent by certified mail to the [redacted], P.O. Box 86, Essex Station, Boston, Massachusetts 02112.
Division of Medical Assistance,

Wherefore your petitioner(s) prayed that said will — ~~and codicil(s)~~ — may be proved and allowed, and that he/she/they be appointed executor/trix thereof, ~~and~~ without surety on his/her/their bond(s) and certify under the temporary and permanent penalties of perjury that the statements herein contained are true to the best of his/her/their knowledge and belief.

Date 10/20/98

Signature(s) Patricia Flaherty
Linda Kacewicz
[redacted]

The undersigned hereby assent to the foregoing petition and to the allowance of the will without testimony.

DECREE

All persons interested having been notified in accordance with the law or having assented and no objections being made thereto, it is decreed that said instrument(s) be approved and allowed as the last will and testament of said deceased, and that said petitioner(s): Patricia Flaherty of Attleboro in the County of Bristol, Linda A. Kacewicz of Warwick in the State of Rhode Island and Michael P. Franchi of Jamaica Plain in the County of Suffolk be appointed executor thereof, first giving bond with sureties for the due performance of said trust, together with the memorandum of Decision attached hereto, if any.

Date June 15, 1999

Beverly W. Wright Doucher
JUSTICE OF THE PROBATE AND FAMILY COURT

CJP2 (8/97)

JUN 29 1999

DATED

I, the undersigned HEREBY CERTIFY that I am the Register of the Probate and Family Court in the County of Middlesex, that such as I have Custody of the records of said Court, and I further Certify that the foregoing is a photographic copy of the decree of appointment of the fiduciary; that said fiduciary has given bond as required by the law and that said appointment remains in full force

Witness, by my hand and seal of the Probate Court of the Commonwealth of Massachusetts, in Cambridge.

Marie A. Gardin

MARIE A. GARDIN ACTING REGISTER
OF MIDDLESEX PROBATE COURT

Appendix 7
Renehan Affidavit
[Pages 49a – 50a]

IN THE
SUPREME COURT OF THE UNITED STATES

ADMINISTRATION PROCEEDING ESTATE OF DEBRA LYNCH a/k/a Debra L. Lynch & Debra Franchi, Deceased	)	No.
Dean Lynch Petitioner	)	
Patricia Flaherty, Linda A. Kacewicz, and Michael P. Franchi, Respondents	)	

AFFIDAVIT OF RICHARD W. RENEHAN

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts, and a shareholder in the Boston law firm of Hill & Barlow, located at One International Place, Boston, MA 02110.

2. I am also a member of the Bar of the United States District Court for the District of Massachusetts, for the Court of Appeals for the First Circuit, and of the Supreme Court of the United States (admitted as of 1971).

3. This affidavit is submitted in response to the untrue allegations made at pages six and seven of the Petition for Writ of Certiorari filed by Petitioner Dean Lynch, an attorney who is proceeding pro se. In that affidavit Mr. Lynch inaccurately states that I made a "misrepresentation...that Petitioner was the 'ex-husband' and that Decedent had been living in Massachusetts for 'two years

Appendix 7
Renehan Affidavit

after the divorce'"; and he also inaccurately states that I admitted to the Court that these statements were untrue.

4. First, my statement to the Court that Petitioner was the ex-husband of the Decedent was accurate as of the date made because as of that date the Surrogate Court in New York (in open court) had issued a decree of divorce based on the parties' Agreement for Divorce. The divorce decree was not entered due to the death of the Decedent.

Second, the Decedent had been living in Massachusetts for one year, eight months and a week, or approximately two years prior to her death on September 5, 1996.

I never stated to the Court that my statements were untrue.

Signed under the pains and penalties of perjury this 14th day of January, 2002.

s/_____
Richard W. Renehan